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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,582	09/29/2003	James Michael O'Dwyer	8676.0005.01	9975
22852	7590	12/13/2006	EXAMINER CHAMBERS, TROY	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			ART UNIT 3641	

DATE MAILED: 12/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/671,582

Applicant(s)

O'DWYER, JAMES MICHAEL

Examiner

Troy Chambers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-14, 16-21 and 36-45 is/are pending in the application.
- 4a) Of the above claim(s) 36-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 9-14 and 16-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 36-45 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The invention as described by claims 9-14 and 16-21 do not require the locating of a sensor system in a land area, the area having a plurality of zones defined by respective sensors nor does it require a box containing a plurality of barrels in parallel orientation, each barrel containing a sensor and a series of projectiles for sequential firing.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 36-45 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

2. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the details of the firing control circuit must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended

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replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification does not provide proper antecedent basis for the term "firing control circuit".

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 9-14 and 16-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

7. Claim 9 requires a firing control circuit that *receives* and *triggers* a weapon. However, it is not clear how or in what manner these functions are performed since the details of a firing circuit capable of such functions are never disclosed.

8. Claim 10 requires the intervention of an operator. However, it is not clear how or in what manner operator intervention takes place when claim 9 requires the system to have a firing control circuit that *receives* and *triggers* the weapon. If the control circuit is not a human, then why does it require intervention of an operator?

9. Claims 9-14 and 16-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the firing controller does not appear to disclose a firing controller that is capable of receiving signals from a sensor system and triggering a weapon when an intrusion is detected.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 9-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4617750 issued to Garehime in view of WO 9420809 issued to O'Dwyer. With respect to claims 9, 10, 11, 12 Garehime discloses a defense system for an area comprising: at least one optics sensor 128; multiple barrel gun 126; a firing controller (the operator); and video console 26. However, Garehime does not disclose each barrel being loaded with multiple projectiles that are sequentially selected and fired. O'Dwyer discloses such a barrel. At the time of the invention, one of ordinary skill in the art would have found it obvious to provide the system of Garehime with the barrel system of O'Dwyer. The suggestion/motivation for doing so would have been to allow the operator of the Garehime device to fire projectiles singly, in pairs, or in any other combination. (WO 9420809, pg. 2, ll. 12-14). The device can be programmed to operate automatically. Col. 6, ll. 58-66

12. With respect to claims 13 and 14, the weapon is remote and has a fixed orientation (any direction that the operator points it to is fixed) to fire directly at the intruder.

13. With respect to claims 16 and 17, Garehime discloses remote sensors 58, 62 (fig. 4). Claim 16 is a method claim and, therefore, does not add any structural element to be given patentable weight.

14. With respect to claim 18, O'Dwyer discloses projectiles that may be round or dart-like (pg. 2, ll. 15-20).

15. With respect to claim 19, Garehime discloses barrel block 390 provided with a plurality of barrels 444 radiating from core 398 (Fig. 22). It is capable of being concealed within the ground.

16. With respect to claim 20, the grenade box is launched into the air with the airplane upon ascent and is capable of use while the plane is descending.

17. With respect to claim 21, O'Dwyer discloses an electrically fired mechanism not requiring ammunition feed or an ejection system.

Response to Arguments

18. Applicant's arguments filed 11/07/2006 have been fully considered but they are not persuasive.

19. Applicant appears to take issue with the fact that Garhime does not disclose a defense system for use in a land area. However, applicant should be well aware of the fact that the land cannot be claimed in any way. Applicant has submitted apparatus claims and, therefore, only the positively recited elements of the apparatus may be claimed. The environment in which a particular device is to be placed will not be given patentable weight.

20. Additionally, the applicant argues that the operator in Garhime “cannot be considered the same as the firing control circuit recited in claim 9.” However, the applicant does not provide arguments supporting this conclusion. It is the Examiner’s position that the firing control function includes the operator. Therefore, the operator is part of the firing control circuit. If applicant disagrees with this position, the Examiner should be provided with a response that details applicant’s firing control circuit and describe how its disclosed structure and function would exclude a human from being interpreted as part of a firing circuit.

Conclusion

21. This is a Request for Continued Examination of the instant application. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

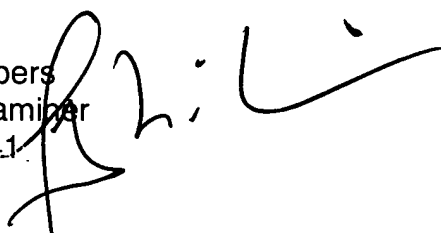
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the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited on form PTO-892 are cited as of interest to show similar defense systems. The MK 15 Phalanx article is of particular importance since it shows an weapon system that automatically tracks and fires upon a target when in an operation mode. As discussed above, the fact that the weapon is used while at sea is irrelevant.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Troy Chambers whose telephone number is (571) 272-6874 between the hours of 7:00 a.m. to 3:30 p.m., M-F. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone, can be reached at (571) 272-6873.

Troy Chambers
Primary Examiner
Art Unit 3641



TC
05 December 2006